

Applicant : Riccardo Dalla Favera
Serial No.: 09/724,254
Filed : November 28, 2000
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requests that it be withdrawn.

Rejection Under 35 U.S.C. §102(e)

The Examiner rejected claims 43, 45-47, 69 and 70 under 35 U.S.C. §102(e), as allegedly anticipated by Ashkenazi et al., U.S. Application Publication No. 2002/0132252 A1, filed November 14, 2001.

In response, applicant respectfully traverses the Examiner's rejection. Applicant maintains that Ashkenazi et al. is not a proper 102(e) reference and as such cannot be used to reject pending claims 43, 45-47, 69 and 70.

In the office action, the Examiner states that the "changes made to 35 U.S.C. §102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. Patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore the prior art date of the reference is determined under U.S.C. 102(e) prior to the amendment by the AIPA.

Former 35 U.S.C. §102(e) states that "[a] person shall be entitled to a patent unless ***** (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title

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before the invention thereof by the applicant for patent." According to M.P.E.P §706.02(f)(1)(I)(C)(3)(c), "U.S. application publications of applications that claim the benefit under 35 U.S.C. §120 or 365(c) of an international application filed prior to November 29, 2000" must be applied "under 35 U.S.C. §102(e) as of the *actual filing date of the later-filed U.S. application* that claimed the benefit of the international application." (Emphasis added) Accordingly, applicant maintains that the 102(e) date of Ashkenazi et al. is November 14, 2001, and therefore cannot be used as a 102(e) prior art reference against the pending claims of the subject application filed November 28, 2000 and claiming the benefit of U.S. Provisional Application No. 60/168,151, filed November 29, 1999.

For the reasons set forth hereinabove, applicant respectfully requests that the Examiner reconsider and withdraw the rejection, and solicits allowance of the pending claims.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicant's undersigned attorneys invite the Examiner to telephone them at the number provided below.

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No fee is deemed necessary in connection with the filing of this Communication. However if any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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Date

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